## UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:03CV607-3-MU

ALLEN BOYD, JR.,	)	
Petitioner,	)	
v.	)	<u>ORDER</u>
JENNIFER LANGLEY, Supt.,	)	
Albermarle Correctional Institution,	)	
Respondent.	)	
	)	

THIS MATTER is before this Court on Petitioner's Motion to Dismiss for Non Compliance, (Document No. 13) filed on May 2, 2004. By Order filed April 15, 2005, this Court directed that the State had ten (10) days from the filing of the April 15, 2005 Order to provide Petitioner with a copy of its Motion for Summary Judgement filed in this case on February 2, 2004. In the instant motion, Petitioner informs the Court that on April 22, 2005 he received a memorandum, certificate of compliance and proof of service from the State, but not a copy of the Motion for Summary Judgment. Petitioner is now asking that the Court dismiss the State's Motion for Summary Judgment because they failed to comply with the Court's Order.

The Court has become aware that the State inadvertently sent the Court an extra copy of the Summary Judgment Motion instead of sending it to Petitioner. The State called the Court and explained the mistake and forwarded the Petitioner the copy of the Motion as soon as it realized its error. For this reason, the Court will deny Petitioner's Motion for Notice of Noncompliance Motion to Dismiss.

THEREFORE, IT IS HEREBY ORDERED (1) that Petitioner's Motion to Dismiss for Noncompliance is <u>Denied</u>; (2) that the State, if it has not already done so, send Petitioner a copy of the Motion for Summary Judgement immediately; and (3) that the Petitioner now has until May 31, 2005 to provide any supplemental affidavits countering the evidence offered by the State's Motion for Summary Judgment.

Signed: May 10, 2005

Graham C. Mullen Chief United States District Judge